

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ANDREA D. STUBBLEFIELD**  
Claimant

VS.

**JOSTENS PRINTING & PUBLISHING**  
Respondent

AND

**ST. PAUL / TRAVELERS INSURANCE**  
Insurance Carrier

Docket No. 1,023,328

**ORDER**

Claimant requests review of the November 14, 2005 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

The Administrative Law Judge (ALJ) declined to award claimant benefits as he concluded claimant's need for treatment originated from an injury that occurred at home while lifting a laundry basket. Thus, her injury did not arise out of and in the course of her employment with respondent. He did, however, find claimant gave timely notice of her injury.

The claimant requests review of this decision, but filed no brief so it is difficult to ascertain the basis of her appeal. Presumably, claimant would argue that while she concedes an injury occurred while she was in her home lifting a laundry basket, her work activities nonetheless gave rise to an injury or an aggravation that now requires treatment.

Respondent argues the claimant was not injured out of and in the course of her employment, and therefore contends that the ALJ's order should be affirmed. Respondent does not dispute the ALJ's finding with respect to notice.

The only issue to be decided in this appeal is whether claimant's accidental injury arose out of and in the course of her employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant began working for respondent as a production worker in 2001. Her job was to feed covers into a machine, returning the finished product to a pallet. This required claimant to bend and twist while lifting anywhere from 10 to 20 pounds for 4 hours out of an 8 hour workday. According to claimant, this job eventually caused her to have low back pain and she testified she first noticed this pain around March 7th or 8th. However, claimant also testified she mentioned her back pain to someone on March 4th, explaining that she was unable to complete her full shift due to the pain.

On March 8, 2005, claimant sought treatment at the emergency room. There she complained of bending down to lift a laundry basket and experiencing a sudden onset of hip and low back pain and an inability to stand up.

On March 9, 2005, claimant went to see Dr. Timothy Bolz, a chiropractor. According to his office notes, claimant indicated her "severe back pain" began "Thursday" and that she "[t]hinks maybe the batting cages aggravated it on Sunday."<sup>1</sup> Dr. Bolz released claimant from work until March 14, 2005. Claimant attempted to return to work on March 15, 2005, but was only able to complete 4 hours of her shift and then left, due to pain.

Claimant ultimately returned to work on March 24, 2005 and she continued to work until August 26, 2005, when her seasonal work ended. She since returned to work on October 31, 2005, but complains that her back has not healed completely. Claimant was also seen by Dr. Sushmita Veloor, who felt that the claimant should go to physical therapy and to have an MRI done as well as some other testing. At the request of the insurance company, claimant also saw Dr. James S. Zarr, and it was his opinion that claimant's work activities did not aggravate the problems with her back.

At the preliminary hearing, the ALJ expressed his confusion over the sequence of events and took it upon himself to question the claimant about the onset of her complaints. The following exchange took place:

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<sup>1</sup> P.H. Trans., Cl. Ex. 1 at 10 (3/9/05 SOAP Notes entry).

**JUDGE AVERY:** Ma'am, I'm a little bit confused as to the scenario of all of these events. When did the laundry incident occur?

A. It was Tuesday night, March 8th, I believe.

**JUDGE AVERY:** Tuesday night, March 8th.[?]

A. March 8th or March 9th, I'm not correct on the -- on the date.

**JUDGE AVERY:** Okay.

A. I just know it was a Tuesday night.

**JUDGE AVERY:** And what occurred exactly at that time?

A. I was in a lot of pain and I had just taken the wash from the washing machine to the dryer and I could not get back up.

**JUDGE AVERY:** Okay. You -- you were putting clothes in the dryer then?

A. Correct

**JUDGE AVERY:** And this is at home. Correct?

A. Correct.

**JUDGE AVERY:** All right. And what do you claim occurred at work to have first caused this pain?

A. The twisting and the bending that I have done. I have reached a couple of times to grab my covers from my desks that are on the side or shelves I would believe, and I had pulled them up front and I had noticed my back popped a couple of times.

**JUDGE AVERY:** And when did this occur?

A. It has occurred countless times at night.

**JUDGE AVERY:** Okay. When did it first occur?

A. I can't guarantee -- I can't recall an exact moment.

**JUDGE AVERY:** Okay.

A. I just know it happened quite a few times.

**JUDGE AVERY:** Well, it would be fair to say that there was no specific incident -- you may have hurt your back at work but there was no specific incident at work that caused your back pain.[?]

A. I believe so.

**JUDGE AVERY:** I mean is that correct?

A. Yes.

**JUDGE AVERY:** Okay. And so the only specific incident we know that caused your back pain was this incident at home where you were putting clothes in the dryer. Correct.

A. That's the onset, yes.<sup>2</sup>

After considering the evidence, the ALJ concluded that while notice of an accidental injury was provided, claimant failed to establish that she had sustained an accidental injury arising out of or in the course of her employment with respondent. The Board agrees with the ALJ's conclusion.

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.<sup>3</sup> Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.<sup>4</sup>

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

The phrase "out of" employment points to the cause or origin of the workers accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which

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<sup>2</sup> *Id.* at 34-37.

<sup>3</sup> K.S.A. 44-501(a).

<sup>4</sup> *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

the accident occurred and means the injury happened while the worker was at work in the employer's service.<sup>5</sup>

In this instance, the ALJ concluded the cause of claimant's present complaints of low back and hip pain neither arose out of nor in the course of her employment. He found that her present need for treatment "originated from her injury at home lifting laundry."<sup>6</sup> Claimant's own testimony substantiates this finding. During the preliminary hearing the ALJ went to great lengths to ascertain whether the laundry incident was truly the onset of her complaints and claimant confirmed that fact. Thus, her vague testimony that her work activities may have caused her problems is difficult to accept, particularly given the medical history given to the emergency room personnel. The fact that she attributes her back pain to an outing at the batting cage only further dilutes the plausibility of work as the source of her present complaints.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.<sup>7</sup>

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Brad E. Avery dated November 14, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of February 2006.

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BOARD MEMBER

c: Seth G. Valerius, Attorney for Claimant  
Bret C. Owen, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>5</sup> *Id.*

<sup>6</sup> ALJ Order (Nov. 14, 2005).

<sup>7</sup> K.S.A. 44-534a(a)(2).